

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,

PLAINTIFF,

-VS-

TIM HOLOHAN, et al.,

DEFENDANTS.

FILED

'06 : SEP 11 A11 :05

: CLERK
U.S. DISTRICT COURT

: CIVIL ACTION # 04-253 (ERIE)

: JUDGE: SEAN J. MCLAUGHLIN

: MAGISTRATE JUDGE: SUSAN BAXTER

NOTICE OF (INTERLOCUTORY) APPEAL

OF THE HONORABLE SEAN J. MCLAUGHLIN'S ORDER OF AUGUST 21, 2006

ADOPTING AMENDED REPORT AND RECOMMENDATION OF JULY 18, 2006

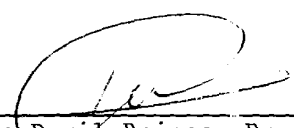
NOW COMES Juan Davila-Bajana, pro se (Petitioner/Appellant); and hereby respectfully submits his Notice of (Interlocutory) Appeal seeking the review of Judge McLaughlin's Order of August 21, 2006, Adopting Magistrate Judge Baxter's Amended Report and Recommendation as the Court's Opinion.

Petitioner/Appellant Davila requests only to Appeal the portion of the Opinion which Dismisses the Eighth Amendment Claim against the Defendants for lack of Exhaustion. Petitioner/Appellant does not wish to, nor does he dispute, the Dismissal of the FTCA Claim and the preservation of his Retaliation Claim.

Wherefore Petitioner/Appellant requests this Honorable Court docket his Appeal and forward his notice to the Appeals Court for the Third Circuit Court of Appeals and prepare the Record on Appeal for the Court of Appeals.

DECLARATION

I, Juan Davila-Bajana, hereby declare and affirm, under the penalty of perjury pursuant to 28 U.S.C. §1746(2), that the foregoing pleading is true and correct, to the best of my knowledge and recollection, this 5th day of September, 2006.



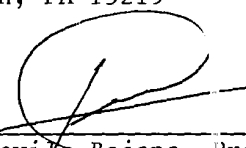
Juan Davila-Bajana, Pro Se
Fed. Reg. No. 47580-053
FCI McKean
P.O. Box 8000
Bradford, PA 16701

CERTIFICATE OF SERVICE

I, Juan Davila-Bajana, hereby certify that I served, by first-class postage prepaid surrender to the prison officials, true and correct Originals of the foregoing pleading and accompanying Declaration, this 5th day of September, 2006, to:

1. Clerk of the Court
U.S.D.C. for W.D. PA
P.O. Box 1820
Erie, PA 16507

2. Paul D. Kovac
Asst. U.S. Attorney
700 Grant St., Ste. 400
Pittsburgh, PA 15219



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